

MINUTES OF MEETING
CITY OF LONDON LAW SOCIETY
EMPLOYMENT LAW COMMITTEE

Video conference
Wednesday 3 June 2020
at 1 pm

In Attendance

Helena Derbyshire, Chair and Host	Skadden Arps
Elaine Aarons	Withers
Paul Griffin	Norton Rose Fullbright
Jane Mann	Fox Williams
Michael Lefley	Addleshaw Goddard
Mark Mansell	Allen & Overy
Nick Robertson	Mayer Brown
Charles Wynn-Evans	Dechert
Sian Keall	Travers Smith
Helga Breen	DWF
Kevin Hart	CLLS
Damian Babic, Minutes	Skadden Arps

Absent

Oliver Brettle	White & Case
Mark Greenburgh	Greenburgh & Co
Rebecca Harding-Hill	BCLP
Kate Brearley	Stephenson Harwood
Chinwe Odimba-Chapman	Clifford Chance
Colin Leckey	Lewis Silkin
John Evason	Baker & McKenzie

1. Apologies were received from those noted as absent.
2. The minutes of the last meeting were approved.
3. Employment Tribunal experiences in lock down/how is the system coping

CWE said that in his capacity as a Tribunal judge he has only dealt with preliminary hearings by telephone. CWE noted that some substantive hearings have been held by video conference, but that experiences will vary very much dependent on the Tribunal in question.

A number of the committee said that they have experienced issues and delays with contacting the London Central Employment Tribunal, particularly in getting hold of the office by telephone.

EA noted that the Tribunal system was already struggling before Covid-19 as a result of the abolishment of Tribunal fees.

The Chair concluded that there was not much positive to report to the International Law Committee for their paper on Brexit and the UK judicial system.

4. Discussion of furlough and practical insights

The committee discussed the issue of consent to furlough and the risk of not obtaining formal consent to it. NR noted that if consent to furlough had not been obtained from employees then there would be serious risk for employers, particularly in deductions from wages claims from employees who are later made redundant.

The committee agreed that the position on consent had not been entirely clear at the outset, and therefore those employers (such as employers in the retail sector) who rushed to furlough employees without obtaining their consent now have the greatest exposure.

ML noted that there might be a lot of unpicking of furlough decisions that were made by employers very quickly at the outset of the furlough scheme. Generally, the committee agreed that there is going to be a "reckoning" for employers who have not complied with the rules (for example, employees being required to work while on furlough) and that it is likely that some of these issues will be litigated when furlough ends and employees are made redundant.

The committee noted that a number of clients were keen to use flexible furlough, despite the complexities of the flexible furlough regime.

The Chair raised the issue of furloughing employees who would otherwise be redundant, and whether the spirit of the scheme was to retain jobs rather than keep paying employees who would otherwise be redundant. EA noted that the ability under the scheme to rehire employees who were previously redundant suggested that it was not a problem to keep redundant employees on furlough. NR said that while there was nothing in the rules to say that employers could not use the furlough scheme to pay employees during their notice period, there could be a PR issue in doing so.

MM noted that in his experience, employers have been reluctant to re-hire employees who were made redundant just to place them on furlough.

There was a discussion on rotating furloughed employees and what might constitute reasonable notice to ask an employee to return to work. NR felt that unless there are complicating individual factors, reasonable notice could be as short as possible, although the committee agreed that longer might be necessary in light of workplace circumstances, health and safety and commuting issues.

5. Extended periods working remotely – issues and benefits

The Chair posed that there might be major changes in working practices in the City given that employees have demonstrated that they can work effectively at home.

JM noted that working from home for junior employees (particularly trainee solicitors in the legal profession) who had been promised face-to-face training, could amount to a breach of contract. The committee felt that while working practices would change, given the positive aspects of working in an office environment, there might not be as big a change in working practices in the long term as the press have suggested.

The Chair noted that the next meeting in September was expected to be at Lewis Silkin, but was likely to be held by video conference again due to Covid-19 restrictions.